

CITY OF EL PASO, TEXAS
AGENDA ITEM DEPARTMENT HEAD'S SUMMARY FORM

CITY CLERK DEPT.
05 FEB 16 PM 3:39

DEPARTMENT: Building & Planning Services

AGENDA DATE: February 22, 2005

CONTACT PERSON/PHONE: Patricia D. Adauto, Deputy City Manager for Building
& Planning Services.

DISTRICT(S) AFFECTED: 5

SUBJECT:

Item is to request APPROVAL of a resolution authorizing the Mayor to execute, on behalf of the City of El Paso, an access agreement for improvements to be carried out by JNC Development, Inc. on City of El Paso property and to also establish a joint agreement permitting both the City of El Paso and the Loma Linda Unit 4 Subdivision use of the pond.

BACKGROUND / DISCUSSION:

This joint use agreement complements the work to be done on the pond in connection with Lee Boulevard. The Loma Linda subdivision will utilize this pond for drainage.

PRIOR COUNCIL ACTION:

Council has not previously acted on this item.

AMOUNT AND SOURCE OF FUNDING:

There are no costs to the City of El Paso related to this improvement activity, therefore, no budgetary adjustments are required. All improvements to the pond will be done at the developer's expense and dedicated to the City of El Paso.

<u>Project</u>	<u>Fund</u>	<u>Department</u>	<u>Account</u>
N/A	N/A	N/A	N/A

BOARD / COMMISSION ACTION:

(N/A)

*****REQUIRED AUTHORIZATION*****

LEGAL: (if required) _____ **FINANCE:** (if required) _____

DEPARTMENT HEAD: _____

APPROVED FOR AGENDA:

CITY MANAGER: _____

DATE: _____

RESOLUTION

WHEREAS, the JNC Development, Inc. is developing Loma Linda Unit 4 Subdivision, El Paso, El Paso, County, Texas, and

WHEREAS, the City has acquired Parcel 23 containing 3.26 acres, more or less, located in Lot 2, Block 2, Hueco View Acres, El Paso, El Paso County, Texas, as a ponding area, and

WHEREAS, the JNC Development, Inc. has requested permission to use the Parcel 23 as a pond for the Loma Linda Unit 4 Subdivision in accordance with City standards; and,

WHEREAS, the City agrees that in consideration for use and entry of the pond, the improvements will further the drainage in the area and is in the best interest of the City.

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EL PASO:

That the Mayor be authorized to sign an Agreement by and between the City of El Paso and JNC Development, Inc, to allow JNC Development, Inc. access to a City ponding area Lot 2, Block 2, Hueco View Acres, El Paso, El Paso, County, Texas to construct ponding area improvements. There is no cost to the City.

ADOPTED this ____ day of _____, 2005.

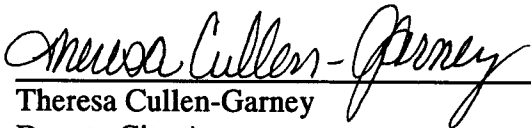
THE CITY OF EL PASO

ATTEST:

Joe Wardy
Mayor

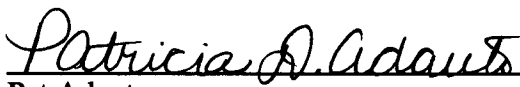
Richarda Duffy Momsen
City Clerk

APPROVED AS TO FORM:



Theresa Cullen-Garney
Deputy City Attorney

APPROVED AS TO CONTENT:



Pat Adauto
Deputy City Manager

AGREEMENT

City Engineer no later than 15 days after execution of this agreement but under no circumstances shall the work, as identified in Exhibit "B", be completed no later than May 31, 2005.

The Developer agrees to furnish the City with a copy of each written agreement entered into with a contractor or consultant retained to complete the construction of the Pond. All of the books and records related to the construction of the Pond shall be available for inspection by the City upon request. Any work performed by a contractor or consultant of the Developer will not, under any circumstances, relieve the Developer of its responsibilities and obligations under this Agreement. All work performed by the Developer or its agent shall be done in a good and workmanlike manner satisfactory to the City. Any contractor or consultant hired by the Developer shall have sufficient skills and experience to properly perform the work described in the City's specifications and shall provide adequate supervision to assure competent performance of the work.

The Developer shall submit detailed plans to the City Engineering Department for approval, with copy to the Street Department. Approval by the City shall not be unreasonably withheld. Failure to submit, obtain the approval, or distribute the approved plan as herein provided shall result in an automatic termination of this Agreement.

The Developer agrees to provide final cost documentation to the City within 30 days of acceptance of the improvements to the pond. The final cost will be actual costs incurred by the Developer to construct improvements as described in Exhibit "B".

2. TERM

This Agreement shall automatically terminate after the construction of the improvements to the Pond is completed, the City Engineer has inspected the Pond to assure that City specifications have been met. If the City Engineer determines that the City's specifications have not been met, the Developer shall be responsible for any necessary corrections and alterations and all costs associated with any necessary corrections and alterations. The City shall not be responsible nor participate in any costs accrued in such instance. In addition, the Developer agrees to give a warranty on its work in accordance with the requirements of the Municipal Code.

3. INCREASED COSTS

It may be anticipated that additional costs may arise from change in site conditions or latent defects; however, the Developer agrees that he will be solely responsible for payment of all increased costs in the construction of the Pond, as identified in Exhibit "B", in such instance.

4. INDEMNITY, RELEASE, AND INSURANCE

The Developer agrees to indemnify and hold the City harmless against any and all claims, demands, damages, costs and expenses, including, but not limited to, investigation expenses and reasonable attorney's fees for the defense of such claims and demands, arising out of or attributed directly, or indirectly to the construction of the improvements to the Pond, as herein defined more specifically, including, but not limited to, claims and liens from subcontractors, bonding companies, employees or other individuals, for obligations arising from the contract, or from any breach on the part of the Developer of the terms of this agreement, or from any damage

to property or injury to person(s) arising from or allegedly arising from the Developer's work under this Agreement.

The Developer further agrees, with the express authority of any other entity or individual in privity with the Developer, now or in the past, that it shall release and forever discharge the City, its agents, employees, representatives, attorneys, and administrators from all claims, liens, demands, damages, actions, causes of action or suits in equity, of any kind or nature, accruing, whether known or unknown on this date, for or because of any matter or thing done, omitted, or suffered to be done or omitted in any way directly or indirectly arising from the construction of the improvements to the Pond, including but not limited to, attorney's fees, costs of preparing a claim or other costs.

The provisions of this section shall survive the expiration or early termination of this agreement. The Developer's obligations under this section shall continue in perpetuity.

The Developer shall provide public liability insurance for personal injuries and death growing out of any one (1) accident or other cause in a minimum amount of Two Hundred Fifty Thousand and No/100 Dollars (\$250,000.00) per person, and Five Hundred Thousand and No/100 Dollars (\$500,000.00) for two (2) or more persons in any one (1) accident, and, in addition, shall provide property damage liability insurance in a minimum sum of One Hundred Thousand and No/100 Dollars (\$100,000.00) for property damage growing out of any one (1) accident or other cause. These amounts are not a limitation upon the Developer's agreement to indemnify and hold the City harmless.

The Developer shall procure said insurance with a solvent insurance company authorized to do business in Texas. All policies shall name the City of El Paso, its officers, agents, servants and employees as additional insureds. The Developer shall file a copy of the policy or certificate of insurance with the City Clerk, the Engineering Department, and the City Attorney's Office. A certificate of the insurance shall be placed on file upon approval of this agreement by the City Council of the City of El Paso.

5. NOTICES

All notices, communications and reports under this Agreement shall be either hand-delivered or mailed, postage prepaid in the United States Postal Service, to the respective parties at the respective addresses shown below, unless and until either party is otherwise notified in writing:

CITY: City Manager
City of El Paso
#2 Civic Center Plaza
El Paso, Texas 79901-1196

Copy to: City Engineer
City of El Paso
#2 Civic Center Plaza
El Paso, Texas 79901-1196

DEVELOPER: JNC Development, Inc.
12300 Montwood
El Paso, Texas 79928

6. CUMULATIVE RIGHTS

All remedies, either under this Agreement or at law or in equity or otherwise available to a party, are cumulative and not alternative and may be exercised or pursued separately or collectively in any order, sequence or combination.

7. GOVERNING LAW

All questions concerning the validity, operation, and interpretation of this Agreement and the performance of the obligations imposed upon the parties hereunder shall be governed by the laws of the State of Texas. Venue shall be in El Paso County, Texas.

8. INTERPRETATION

This Agreement shall be deemed to have been jointly prepared by all parties hereto, and no ambiguity herein shall be construed for or against any party based upon the identity of the author of this Agreement or any portion hereof.

9. ASSIGNMENT

The Developer shall have the right to assign its rights and obligations in this Agreement. In the event that the Developer does assign its rights under this Agreement, the assignee shall execute an assignment agreeing that it will be responsible for all of the obligations of Developer, a copy of which shall be sent to the City.

10. RELATIONSHIP

It is expressly understood and agreed by and between the parties that the Developer is not an officer, agent or employee of the City and is not subject to the direct or continuous supervision and control of the City. The City and the Developer hereby acknowledge and agree that the City has not formed, and is not forming with the Developer or any other party, a partnership, joint venture, or any other similar entity by entering into this Agreement; and this Agreement is not intended to and shall not be construed, to create any such entity or relationship.

11. ENTIRE AGREEMENT

This Agreement embodies and constitutes the entire understanding between the parties with respect to the transactions contemplated herein, and all prior or contemporaneous agreements, understandings, representations, and statements, oral or written, are merged into this Agreement. This Agreement may not be modified except by an instrument in writing signed by both parties.

12. AUTHORIZED SIGNATURE

The person executing this Agreement on behalf of the Developer warrants to the City that the Developer is a duly authorized and existing Texas corporation, that the Developer is qualified to do business in the State of Texas, that Developer has full right and authority to enter into this Agreement, and that every person signing on behalf of the Developer is authorized to do so.

WITNESS THE FOLLOWING SIGNATURES AND SEALS:

THE CITY OF EL PASO

ATTEST:

Mayor

Richarda Duffy Momsen, City Clerk

APPROVED AS TO FORM:

Theresa Cullen-Garney
Theresa Cullen-Garney
Deputy City Attorney

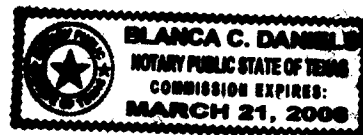
APPROVED AS TO CONTENT:

Patricia D. Adauto
Pat Adauto
Deputy City Manager

DEVELOPER: JNC Development, Inc.

By: Archie Bombard
President

Blanca Daniels



ACKNOWLEDGEMENT

STATE OF TEXAS)
)
COUNTY OF EL PASO)

This instrument was acknowledged before me on the _____ day of _____, 2005, by _____, as Mayor of THE CITY OF EL PASO, TEXAS on behalf of said City.

My Commission Expires:

Notary Public, State of Texas
Notary's Printed or Typed Name:

ACKNOWLEDGEMENT

STATE OF TEXAS)
)
COUNTY OF EL PASO)

This instrument was acknowledged before me on the 15th day of February, 2005, by Nicolas A Bombardieri, as President of JNC DEVELOPMENT, INC., on behalf of said corporation.

My Commission Expires:



Blanca C Daniels
Notary Public, State of Texas
Notary's Printed or Typed Name:
Blanca C Daniels

May, 2002
Parcel 23
Page 1 of 2

EXHIBIT A Page 1 of 3 Pages

Highway:
Limits: From Pratt Avenue Northerly to
U.S. Highway 62 & 180 (Montana Avenue)
County: El Paso
Account No.:
ROW CSI: 924-06-171
Owner: Fernando A. and Elizabeth C. Martinez Family Trust

Property Description for
Parcel 23

Being a 3.2626 (142,117 square feet) acre parcel of land, situated in Lot 2, Block 2, Hueco View Acres, as recorded in Volume 4, Page 41, Plat Records of El Paso County, Texas, conveyed to Fernando A. and Elizabeth C. Martinez Family Trust, as recorded in Volume 4235, Page 1938, Deed Records of El Paso County, Texas, said 3.2626 acres of land, being more particularly described by metes and bounds as follows with all bearings and coordinates referenced to the Texas State Plane Coordinate System, Central Zone, North American Datum 1983 (1993 Adjustment). All coordinates and distances are surface based upon NGS Station "Sherman RM5" and may be converted to grid values by applying the combined scale factor of 0.999787552 at said NGS Station "Sherman RM5".

COMMENCING for reference at a 5/8" rebar with cap stamped "LAND-MARK TX4869 NM11402" set at 669.97 feet right of and perpendicular to Lee Boulevard Baseline Station 49+32.48 lying at the northwest corner of said Lot 2, Block 2, Hueco View Acres, as recorded in Volume 4, Page 41, Plat Records of El Paso County, Texas, conveyed to Fernando A. and Elizabeth C. Martinez Family Trust, as recorded in Volume 4235, Page 1938, Deed Records of El Paso County, Texas, said point being the TRUE POINT OF BEGINNING, having surface coordinates of Y=10,665,557.3165 and X=446,213.1919;

- (1) THENCE, South 86°53'13" East, with the northerly boundary line of said Lot 2, a distance of 640.00 feet to a 5/8" rebar with cap stamped "LAND-MARK TX4869 NM11402" set at 1,309.94 feet right of and perpendicular to Lee Boulevard Baseline Station 49+26.30 at the northeast corner of said Lot 2, and the existing westerly right-of-way line of Harkis Road (50.00 feet wide) for a corner of this parcel;
- (2) THENCE, South 02°33'35" West, with said existing westerly right-of-way line, a distance of 25.00 feet to a 5/8" rebar with cap stamped "LAND-MARK TX4869 NM11402" set at 1,309.94 feet right of and perpendicular to Lee Boulevard Baseline Station 49+01.30 in the easterly boundary line of said Lot 2 for a corner of this parcel;

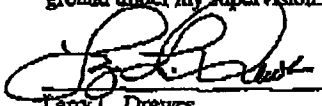
May, 2002
Parcel 23
Page 2 of 2

EXHIBIT A Page 2 of 3 Pages

- (3) THENCE, North 86°53'13" West a distance of 240.00 feet to a 5/8" rebar with cap stamped "LAND-MARK TX4869 NM11402" set at 1,069.95 feet right of and perpendicular to Lee Boulevard Baseline Station 49+03.61 for a corner of this parcel;
- (4) THENCE, South 02°33'35" West a distance of 315.31 feet to a 5/8" rebar with cap stamped "LAND-MARK TX4869 NM11402" set at 1,069.95 feet right of and perpendicular to Lee Boulevard Baseline Station 45+88.31 in the southerly boundary line of said Lot 2 for a corner of this parcel;
- (5) THENCE, North 86°53'13" West, with said southerly boundary line of said Lot 2, a distance of 400.00 feet to a 5/8" rebar with cap stamped "LAND-MARK TX4869 NM11402" set at 669.97 feet right of and perpendicular to Lee Boulevard Baseline Station 45+92.17 at the southwest corner of said Lot 2 for a corner of this parcel;
- (6) THENCE, North 02°33'35" East, with the westerly boundary line of said Lot 2, a distance of 340.31 feet to the TRUE POINT OF BEGINNING and containing a computed area of 3.2626 acres (142,117 square feet) of land, more or less.

This Metes and Bounds description is accompanied by a separate plat of the same date. The proposed baseline information recited herein is based on a design schematic drawing provided by Moreno Cardenas, Inc.

I Larry L. Drewes, a Registered Professional Land Surveyor, hereby certify that the legal description hereon and the accompanying plat represent an actual survey made on the ground under my supervision.


Larry L. Drewes Date 07.03.02
Registered Professional Land Surveyor
Texas License No. 4869



LAND-MARK PROFESSIONAL SURVEYING, INC.
1405 Vanderbilt, Suite A
El Paso, Texas 79935
(915)-598-1300
May 2, 2002

NOTES

1. ALL BEARINGS AND COORDINATES ARE REFERENCED TO THE TEXAS STATE PLANE COORDINATE SYSTEM, CENTRAL ZONE, NORTH AMERICAN DATUM 1983 (1983 ADJUSTMENT). ALL COORDINATES AND DISTANCES ARE SURFACE BASED UPON NOS STATION "SHERMAN RMS" AND MAY BE CONVERTED TO GRID VALUES BY APPLYING THE COMBINED SCALE FACTOR OF 0.999787552 AT NOS STATION "SHERMAN RMS".

2. THIS SURVEY WAS PERFORMED WITHOUT THE BENEFIT OF A COMMITMENT FOR TITLE INSURANCE AND MAY NOT INCLUDE EASEMENTS AND INFORMATION PERTAINING TO THESE TRACTS. RECORD INFORMATION SHOWN ON THIS MAP IS BASED ON PUBLIC RECORD INFORMATION.

THE BASELINE SHOWN HEREON IS PER A DESIGN SCHEMATIC FILE PROVIDED BY MORENO CARDENAS, INC.

3. ALL BEARINGS AND DISTANCES AROUND WHOLE PROPERTY INSETS ARE BASED ON DEED RECORDED INFORMATION AND ROTATED TO MATCH PROPOSED R.O.W. LINE.

4. THIS PLAT IS ACCOMPANIED BY A SEPARATE METES AND BOUNDS DESCRIPTION.

5. (EXISTING RIGHT-OF-WAY AS PER HUECO VIEW ACRES SUBMISSION, AS RECORDED IN VOLUME 4, PAGE 41, PLAT RECORDS OF EL PASO COUNTY, TEXAS.

6. P.R.E.P.C.T. = PLAT RECORDS OF EL PASO COUNTY, TEXAS.

7. D.R.E.P.C.T. = DEED RECORDS OF EL PASO COUNTY, TEXAS.

SURVEY RECORD

SET 8/4" NEBM WITH CAP STAMPED "LANDMARK TX 1999 JUL14/01"

CHAIN LINK FENCE

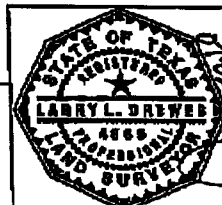
● SURVEY POLE

0 50 100
SCALE 1" = 100'

LINE	LENGTH	DISTANCE
1	301.27	301.27
2	15.00	15.00

LEGEND: A PORTION OF LOT 2, BLOCK 2, HUECO VIEW ACRES

W/400 - 4.9997 ACRES
219,746 SQ. FT.
REDUCED - 3.8966 ACRES
148,117 SQ. FT.
REMAINING - 1.1032 ACRES
78,629 SQ. FT.



I HEREBY CERTIFY THAT THIS SURVEY WAS CONDUCTED IN THE PRESENCE OF THE SURVEYOR AND THAT THIS PLAT IS A TRUE AND CORRECT REPRESENTATION OF THE SURVEY.

LARRY L. DREWES
REGISTERED PROFESSIONAL LAND SURVEYOR
TEXAS EXPIRATION 03/31/2005



Right-of-Way Acquisition
CITY OF EL PASO, EL PASO COUNTY, TEXAS

RIGHT-OF-WAY ACQUISITION
CITY OF EL PASO, EL PASO COUNTY, TEXAS

Land-Mark Professional Surveying, Inc.
1403 Yucca Street, Suite 201
El Paso, Texas 79902
(915) 598-1200 FAX (915) 598-1227

Rev.	Description	Date	By
1			

NON CPA 100-00-110
PLAT 451 1 452
Date 10/1/2003
Drawn by C. Chetani
Sheet 1 of 1

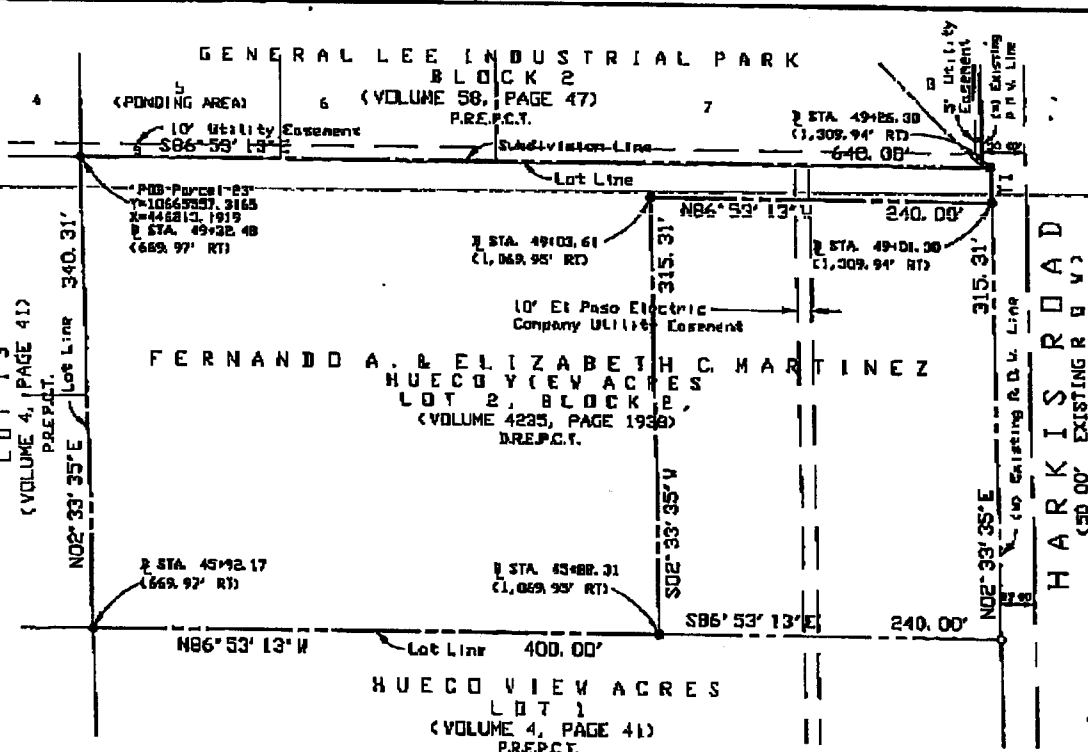


EXHIBIT B

Description of improvements to be undertaken by Developer:

1. Construction of approximately 715 lineal feet of rock wall (six feet in height) separating the residential area from the pond,
2. Construction of chain link fence (approximately 350 lineal feet) at western boundary of pond,
3. Grading of the maintenance road around the pond adjacent to the residential area (approximately 715 lineal feet), and
4. Excavation from proposed pond of approximately 4,400 cubic yards of soil, constituting the portion of the pond necessary to serve Loma Linda Unit 4